INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	3
Statement	3
Argument	8
Conclusion	17
Appendix	18

CITATIONS

Cases:

Abbott v. *Morgenthau*, 93 F. 2d 242, certiorari denied, 303 U. S. 638	10, 15
Anderson v. *Abbott*, 321 U. S. 349	12
Becker Co. v. *Cummings*, 296 U. S. 74	12
Booth v. *Oakland Bank*, 122 Cal. 19	14
Brown v. *United States*, 65 F. 2d 65	12
Brownlee v. *Board of Directors of Veterans' Home of California*, 133 Pac. 1158	16
Childers v. *Beaver*, 270 U. S. 555	10
Fennell v. *United States*, 67 F. 2d 768	12
First National Bank v. *California*, 262 U. S. 366	12
Haley v. *United States*, 46 F. Supp. 4	12
Interstate Commerce Commission v. *Oregon-Washington R. Co.*, 288 U. S. 14	12
In re Dumont's Will, 257 N. Y. App. Div. 952, affirmed, 282 N. Y. 606	12
Irvine v. *Marshall*, 20 How. 558	14
Lawrence v. *Shaw*, 300 U. S. 245	10
Miller v. *Little*, 47 Cal. 348	10
Monsen v. *Monsen*, 174 Cal. 97	14
Nichols v. *Emery*, 109 Cal. 323	14
Ruddy v. *Rossi*, 248 U. S. 104	10
Russell v. *Lowth*, 21 Minn. 167	10
Russian Fleet v. *United States*, 282 U. S. 481	12
State v. *Bank of Bristol*, 165 Tenn. 461	11
Tax Commission of Ohio v. *Rife*, 119 Ohio St. 83	10
Treadway v. *Board of Directors of Veterans' Home of California*, 14 Cal. App. 75	14
United States v. *Allegheny County*, 322 U. S. 174	14

Cases—Continued. Page

United States v. *Hall*, 98 U. S. 343 10
United States v. *Klein*, 303 U. S. 276 13
United States v. *Stevens*, 302 U. S. 623 ..... 10, 13
Walton v. *Cotton*, 19 How. 355 10

Statutes:
Act of July 1, 1902, c. 1351, 32 Stat. 552 (24 U. S. C. 139) .. 12
Act of June 25, 1910, c. 384, 36 Stat. 703 (24 U. S. C. 136) .. 12
Act of July 3, 1930, c. 849, 46 Stat. 991 5
California Probate Code:
§ 231 ..... 13, 20
§ 1020 20
§ 1027 ..... 8, 21
Maryland Code, Article 93, § 140 13
World War Veterans' Act of 1924, § 21, as amended by the Act of August 12, 1935, c. 510, 49 Stat. 607 (38 U. S. C. 450) 2, 5, 8, 18
38 U. S. Code:
§ 451 11
§ 512 11
§ 514 11

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1092

STATE OF CALIFORNIA (IN THE MATTER OF ESTATE OF CARL A. LINDQUIST, ALSO CALLED CARL LINDQUIST), PETITIONER

v.

UNITED STATES OF AMERICA

No. 1093

STATE OF CALIFORNIA (IN THE MATTER OF ESTATE OF PATRICK WALKER, ALSO KNOWN AS PATRICK J. WALKER), PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the California Supreme Court *In the Matter of the Estate of Carl A. Lindquist,*

etc. (L. R. 24–44)[1] is reported in 25 Adv. Cal. 693; 154 Pac. 2d 879. Its opinion *In the Matter of the Estate of Patrick Walker, etc.* (W. R. 49–50) is reported in 25 Adv. Cal. 714; 154 Pac. 2d 891. The opinion of the California District Court of Appeals, First Appellate District, *In the Matter of Lindquist,* not contained in the record, is reported in 144 Pac. 2d 438. The memorandum opinion of the Superior Court of San Diego County, California, *In the Matter of Walker* (W. R. 21–22) is not officially reported.

JURISDICTION

The judgments of the California Supreme Court in Nos. 1092–1093 were entered on December 30, 1944 (L. R. 46–47; W. R. 50–51). The petitions for writs of certiorari were filed on March 30, 1945. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 21 (3) of the World War Veterans' Act, as amended by the Act of August 12, 1935, provides *inter alia* that proceeds of pension payments remaining unexpended in the estate of an

[1] In this consolidated brief in opposition, references to the transcript of record in No. 1092, *In the Matter of Lindquist*, are designated by the symbol L. R.; those to the transcript of record in No. 1093, *In the Matter of Walker*, by the symbol W. R.

incompetent veteran "shall escheat" and "shall be returned" to the United States where such proceeds would otherwise escheat to the state of the veteran's last legal residence. The sole question presented in each case is whether the Act is unconstitutional as contravening the Tenth Amendment.

STATUTES INVOLVED

The applicable provisions of the Act of August 12, 1935, c. 510, 49 Stat. 607 (38 U. S. C. 450 (3)), and of the California Probate Code are set forth in the Appendix, *infra,* pp. 18–21.

STATEMENT

The facts in Nos. 1092–1093 may be viewed as identical insofar as the question here presented is concerned.

In No. 1092, Lindquist, an incompetent World War veteran of the United States Navy, residing in San Francisco, California, died intestate and without known heirs on October 24, 1939 (L. R. 11, 15, 17). He left an estate consisting entirely of unexpended pension moneys paid to his guardian under a pension award by the United States Veterans Administration, dated December 11, 1935 (L. R. 18). Letters of administration of Lindquist's estate were issued following his death to the Public Administrator for San Francisco (L. R. 4–5), and on April 16, 1940, the guardian rendered a final accounting and paid over the un-

expended balance of the estate, consisting as aforesaid entirely of unexpended pension moneys, to the Public Administrator (L. R. 8).

On November 7, 1940, the Public Administrator filed a petition for settlement of final account and for final distribution of the estate in the Superior Court of the County of San Francisco, California, praying that an order be made "determining who are entitled to the estate of said deceased, and directing that all the * * * remainder of the estate of said deceased be distributed to the persons who by law are entitled thereto" (L. R. 11–12). Thereafter, on December 3, 1940, the United States filed claim with the Administrator seeking payment to the United States under the provisions of 38 U. S . C. 450 (3) (Appendix, *infra,* pp. 18–20) of all funds in the hands of the Administrator derived from the deceased's pension, in the event such funds would otherwise escheat to the State of California for want of heirs (L. R. 14–16).

On July 10, 1942, the Superior Court entered a decree of settlement of final account and final distribution (L. R . 16–19). The court therein found that the deceased died intestate and without heirs or next of kin entitled to share in the estate, and that the estate consisted entirely of moneys received under the pension award by the Veterans Administration (L. R. 17–18). The court denied the claim of the United States for dis-

tribution of the estate under the provisions of 38 U. S. C. 450 (3) and instead ordered that the estate be distributed to the State of California as escheated property under certain provisions of the California Probate Code (L. R. 18–19).

In No. 1093, Walker, a veteran of the Spanish American War and a resident of California, received pension payments from the Federal Government commencing June 27, 1899 (W. R. 21, 49). He was subsequently declared incompetent on October 7, 1938, and thereafter, until his death on December 11, 1940 (W. R. 1), the pension payments due him were made to a guardian (W. R. 22). Following Walker's death, intestate, his guardian rendered a final accounting and paid over the unexpended balance of his estate to the Public Administrator for the County of San Diego, California, Walker's last legal residence. It is conceded that, as in the *Lindquist* case, the funds so paid over consisted entirely of unexpended pension moneys paid after the enactment of the present provisions of 38 U. S. C. 450 (3).[2]

[2] As noted above, Walker received pension payments as a veteran of the Spanish American War prior to the Act of August 12, 1935, c. 510, 49 Stat. 607 (38 U. S. C. 450 (3)). Before the 1935 amendment, the applicable Section applied solely to compensation paid to veterans of the World War, but was otherwise substantially identical with the present provisions. (See Act of July 3, 1930, c. 849, 46 Stat. 991, 993). As stated in the opinion of the Supreme Court of California (W. R. 49), the petitioner conceded that Walker's estate consisted entirely of unexpended pension payments made after the 1935 enactment, and petitioner does not con-

On October 26, 1942, the Public Administrator filed a petition for distribution (W. R. 9–12) in the Superior Court of San Diego County, praying that a decree be made "distributing the remaining assets of said estate, less costs of closing, to the persons entitled thereto * * *" (W. R. 10). Thereafter, on November 27, 1942, the United States, relying on the provisions of 38 U. S. C. 450 (3), filed a petition in the Superior Court praying distribution to the United States of the net estate upon the ground that the deceased did not leave surviving him any person capable of succeeding to the estate under the laws of California (W. R. 15–17). On the same date, the State of California filed claim in the matter for distribution of the estate to it on the ground that the estate property had "escheated to the State of California" (W. R. 17–19).

On January 29, 1943, in conformity with a memorandum opinion earlier entered (W. R. 21–22), the Superior Court entered an "order and decree * * * of distribution" (W. R. 22–24), in which it was found that there were no known heirs of the deceased and that the entire estate subject to distribution consisted of "accumulations from beneficial payments to deceased by the United States Government," but which nevertheless denied the claim of the United States and

---

tend otherwise in its petition (cf. W. Pet. 5). Consequently, no question is involved as to the retroactive effect of the 1935 enactment.

instead decreed that the estate should escheat to the State of California.

The United States appealed from this decree and that rendered by the Superior Court in the *Lindquist* case to the Supreme Court of California (L. R. 19; W. R. 24–25). The court transferred the *Lindquist* case to the District Court of Appeals for the First Appellate District which reversed the holding of the Superior Court and sustained the claim of the United States for distribution of Lindquist's estate to it under the provisions of 38 U. S. C. 450 (3). Thereafter, the *Lindquist* case and the *Walker* case were considered by the Supreme Court of California en banc. The decision of the California Supreme Court, entered on December 30, 1944, affirmed, one judge dissenting, that of the District Court of Appeals for the First District *In the Matter of Lindquist,* thereby sustaining the claim of the United States for distribution of the Lindquist estate to it. On the same date, the Supreme Court of California reversed the decree of the Superior Court of San Diego County, in the *Walker* case, adopting its opinion *In the Matter of Lindquist.*[3]

[3] Although these opinions sustained the constitutionality of the federal statute involved and affirmed the right of the United States to receive back unexpended pension moneys left in the estates of deceased incompetent veterans dying intestate and without heirs, the court held that the estate moneys in both cases must be deposited in the state treasury for a period of five years following the termination of the

ARGUMENT

Section 21 (3) of the World War Veterans' Act of 1924, as amended (Appendix, *infra*, pp. 18–20), provides that funds left in the hands of guardians of deceased incompetent veterans "derived from compensation * * * or pension, payable under said [pension and compensation] Acts, which under the law of the State wherein the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States and shall be returned by * * * [the veteran's] guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Veterans' Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance, or pension" (38 U. S. C. 450 (3)).

Relying upon the use of the word "escheat" to characterize the contingent right to the return of the pension moneys provided in the statute, peti-

---

probate proceedings under the provisions of Section 1027 of the California Probate Code. The United States is filing conditional cross-petitions for writs of certiorari in these cases praying a review of this aspect of the court's opinion and judgment in each case in the event this Court grants the petitions here involved. Discussion of the provisions of Section 1027 of the Probate Code and of their possible effect upon the federal statute here involved is contained therein.

tioner contends that the statute is an invasion of the reserved rights of the states under the Tenth Amendment to regulate the distribution of property in the estates of its citizens dying intestate. To support this position, petitioner urges (1) that "the money having been paid to the deceased without reservation, the United States can no longer assert control over it" (L. Pet. 8; W. Pet. 8); and (2) that "a state * * * has * * * sole and exclusive power * * * over the disposition of the property of its residents" (L. Pet. 9; W. Pet. 8). The Supreme Court of California correctly, we maintain, rejected these contentions in the instant context, holding that the United States had imposed a permissible condition on the grant of a federal bounty and that, in any event, the payment and acceptance of the pension money under the terms prescribed by the statute created a valid contractual obligation to return the money upon the occurrence of the condition.

1. As clearly appears from the Act here involved, the pension payments were not, as petitioner contends, "paid without reservation." Here, the United States affixed to its grant of pension moneys the definite condition that the unexpended portion thereof should revert to the United States in circumstances wherein the money otherwise would escheat to the state. The validity of conditions attached to federal grants has consistently been upheld, notwithstanding the fact

that they operate in a field ordinarily reserved to the states.[4] Thus, in *Ruddy* v. *Rossi,* 248 U. S. 104, a provision attached to the grant of homestead lands that such lands should not be subject to levy or attachment in satisfaction of debts contracted by the grantee prior to the grant was sustained. See also *Miller* v. *Little,* 47 Cal. 348; *Russell* v. *Lowth,* 21 Minn. 167, 169–170. Similar provisions with respect to pension payments were approved in *Walton* v. *Cotton,* 19 How. 355, 358; cf. *United States* v. *Hall,* 98 U. S. 343, 354–355, and a statutory exemption of such payments from local taxation was specifically upheld in *Lawrence* v. *Shaw,* 300 U. S. 245. Nor is the federal condition invalid because it affects state laws relating to descent and distribution of decedents' estates. *United States* v. *Stevens,* 302 U. S. 623; *Childers* v. *Beaver,* 270 U. S. 555; *Tax Commission of Ohio* v. *Rife,* 119 Ohio St. 83; *Abbott* v. *Morgenthau,* 93 F. 2d 242 (App. D. C.), certiorari denied, 303 U. S. 638.[5] Accordingly, it is submitted that the

[4] The essential reasonableness of the condition was recognized by the court below. It stated: "That unexpended pension money, under the conditions enumerated in the statute, should be returned to its source and be used in further aid of veterans, is eminently just and equitable" (L. R. 30; W. R. 34).

[5] In *Abbott* v. *Morgenthau,* the court said (93 F. 2d at p. 245):

"* * * Felley * * * had no vested legal right to a pension at all, for, as has been said time and time again, pensions are bounties which Congress has the right to give, to withhold, to distribute, or to recall, at its discretion.

United States may validly prescribe that where the bounty granted for the relief of a veteran is not entirely utilized for that purpose prior to death, the unexpended residue shall revert to the donor. This provision for reversion, consequently, despite the legislative use of the word "escheat," is in no sense the technical type of escheat which alone might lend color to petitioner's arguments. The legislative intent is clear and a technical connotation should not be given the word in such circumstances.[6] Under familiar canons of construction, the statute

---

When, therefore, it is considered that Congress could annex whatever conditions it pleased whenever it pleased to the grant or the gratuity, it seems to us clear that it was competent for Congress to say, as it did say, that, if anyone enjoyed the benefits of the home [for veterans] and was still a member of the home at the time of his death, his accumulated pension money should be distributed in a particular manner. * * *."

[6] Cf. *State* v. *Bank of Bristol*, 165 Tenn. 461, 468–469, where the Tennessee Supreme Court said of this quasi-contractual right of reversion or "escheat" under the provisions of 38 U. S. C. 450 (3) as then applicable:

"It seems a mistake to us to say that the government retained any title to or interest in this fund after it was paid to the guardian. The government retained control of the administration of the fund, to a limited extent, and made a provision with reference to escheat. Such provisions are sustained because the guardian was not bound to accept the fund, and if he did accept, he took on the terms prescribed by the Act of Congress."

Compare also, the numerous cases arising under Sections 451, 512 and 514 of Title 38 of the Code, where the courts have invariably, without discussion, assumed the validity

should be construed in such manner as to render it constitutional. *Becker Co.* v. *Cummings,* 297 U. S. 74, 80; *Interstate Commerce Commission* v. *Oregon-Washington R. Co.,* 288 U. S. 14, 40; *Russian Fleet* v. *United States,* 282 U. S. 481, 492.

The contention of California that it possesses an absolute power of escheat merely because the funds in question were possessed by her residents or present in her territory at the time of death is untenable. The state may not frustrate the purposes of national legislation by the declaration of an escheat. *First National Bank* v. *California,* 262 U. S. 366, 369–370; cf. *Anderson* v. *Abbott,* 321 U. S. 349, 365. Nor does the fact that the funds have been involved in state probate proceedings for a determination of the nonexistence of heirs establish any right of escheat,[7] it having

---

of provisions relating to war risk insurance policies that payments not yet made shall "escheat" to the Federal Government. *Brown* v. *United States,* 65 F. 2d 65, 67 (C. C. A. 9); *Fennell* v. *United States,* 67 F. 2d 768 (C. C. A. 5); *Haley* v. *United States,* 46 F. Supp. 4, 7 (D. Mont.); *In re Dumont's Will,* 257 N. Y. App. Div. 952, 953, affirmed, 282 N. Y. 606.

[7] While Congress could have limited the inheritance of pension moneys to the widow, dependent children or dependent mother or father as was done in the Act of July 1, 1902, c. 1351, 32 Stat. 552, 564 (24 U. S. C. 139) or could have provided that all the decedent's personal property would pass to the home for veterans, subject to reclamation by the heirs within five years (Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (24 U. S. C. 136)), it is to be observed that the federal statute here involved follows the state law in respect of

been held in *United States* v. *Klein,* 303 U. S. 276, that the custody of funds by a court does not enable its sovereign to prevent the disposition of the funds under the law otherwise applicable to them. As the court below remarked (L. R. 35; W. R. 40): "A state escheat statute is based upon state sovereignty and is a direction for the devolution of property. It may not prevail over the United States Constitution or over a congressional act which does not deprive one of property interests without due process of law."

2. The statutory provision in question also is enforceable as a contract. In *United States* v. *Stevens,* 302 U. S. 623. an ex-soldier executed an agreement in order to obtain admission into the national veterans' home that upon the death of the veteran while a member of the home, all his personal property should pass to the home sub-

---

descent and distribution and that it is only at the point where the escheat to the state would otherwise occur that the federal statute operates. This course was made necessary by the varying laws of the states as to the degree of consanguinity necessary to qualify next-of-kin as heirs in cases of intestacy. Compare, *e. g.*, the restricted right of escheat given by Section 231 of the California Probate Code (Appendix, *infra*, p. 20), that "If the decedent leaves no one to take his estate or any portion thereof, under the laws of this state, the same escheats to the state * * *," with the broader right of escheat provided by the Maryland Code, Art. 93, Sec. 140, that "If there be no widow or relations of the intestate within the fifth degree, which shall be reckoned by counting down from the common ancestor to the more remote, the whole surplus shall belong to the State * * *."

ject to reclamation within five years by legatees or persons entitled to receive the property by inheritance. The Court held the Government could enforce the agreement on death as a contractual obligation and reversed the circuit court of appeals which had judged the federal statute authorizing the contract invalid as an invasion of the rights of the state of the veteran's domicile to regulate testamentary dispositions. It is noted (L. Pet. 16; W. Pet. 18) that in the course of the decision in the *Stevens* case, the Court remarked that the contract there upheld was in conformity with and enforceable under the laws of Massachusetts, the veteran's domicile. It is believed that the Court pointed to this fact for the purpose of demonstrating that it was unnecessary to decide whether federal or state law governed such contract. It is submitted that here federal law is solely applicable. *E. g., Irvine* v. *Marshall,* 20 How. 558; *United States* v. *Allegheny County,* 322 U. S. 174. In any event, it is clear that contracts to transfer such property as a veteran may possess at death also are valid under California law, both as to public contracts of the nature here involved (*Treadway* v. *Board of Directors of Veterans' Home of California,* 14 Cal. App. 75) and as to private contracts (*Nichols* v. *Emery,* 109 Cal. 323; *Booth* v. *Oakland Bank,* 122 Cal. 19; *Monsen* v. *Monsen,* 174 Cal. 97).

It is settled, moreover, under federal and California holdings alike, that formal consent by the veteran to a statutory provision of the nature here involved is not requisite to its enforcement. In *Abbott* v. *Morgenthau,* 93 F. 2d 242 (App. D. C.), certiorari denied, 303 U. S. 638, the veteran involved had signed an application for admission to the National Veterans' Home, one proviso of which stipulated for the distribution of certain unexpended pension payments on deposit with the treasurer of the home without probate proceedings, in a manner prescribed by statute. The veteran having been incompetent and under guardianship at the time of signing, the contention was made that the statutory provision was inoperative because the veteran lacked capacity to contract and the guardianship court had not signified its approval of his admission. The court enforced the condition, stating in part (93 F. 2d at p. 245):

> But the inclusion of this [statutory] language in the application form added nothing to the effectiveness of the statute, nor was there any necessity for an agreement on Felley's part to make it binding upon him as a member of the home; and this is true because there is nothing in the statute which requires consent to its terms on the part of the applicant for admission to the home. It is a self-executing act—complete in itself and requiring neither consent or agreement to become operative.

> It was not, therefore, Felley's consent that transferred the pension money to the home fund, but his presence in the home * * *.

Similarly, in *Brownlee* v. *Board of Directors of Veterans' Home of California,* 133 Pac. 1158 (Cal. D. C. A.), hearing denied by the Supreme Court of California, the court held enforceable the provisions of a California statute enacted after the admission of a veteran to the state veterans' home that "any moneys belonging to the members of the Home" should, "upon their death, be held as a trust fund, to be paid by the board, directly and without probate," to those entitled to the veteran's estate, provided claim was made within five years. The veteran died intestate. The court held, despite the fact that the veteran had not expressly consented to the operation of the statute enacted subsequent to his admission to the home, that the veteran's enjoyment of the benefits of the home, and his failure to make a will otherwise disposing of his property, resulted in an implied agreement.

It is thus plain that both federal and California courts uphold the imposition of conditions of this nature when incorporated into statutes providing for the grant of benefits and gratuities, irrespective of whether the consent of the veteran is formally expressed as in the *Stevens* case or implied by the acceptance of the gratuity to which the condition attached.

CONCLUSION

The decision below is correct and no conflict exists. It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

HUGH B. COX,
Acting Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
PAUL A. SWEENEY,
BONNELL PHILLIPS,
WALTER J. CUMMINGS, JR.,
Attorneys.

APRIL 1945.